S.B. Civil Writ Petition No.5035/07
Depala Ram vs. Jetha Ram & ors.

Date of order: 25.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. N.S. Acharya for the petitioner.
Mr. Mahesh Bora for the respondents.

Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 23.5.2007 by which the trial court allowed the non-petitioner-plaintiffs' application filed under Order 13 Rule 10,C.P.C. for summoning of the documents, rather say, the case file of the earlier suit in which the decree for eviction was passed in favour of the petitioner and in execution of which the petitioner took possession of the property.

It appears that the suit no.10/1980 was filed in the court of Munsif, Nokha and a decree was passed on 15.9.1983. On 16.8.1984, in execution of the decree, possession of the property was handed over to the decree holders and the execution was decided on 28.8.1984 in full satisfaction.

The non-petitioner-plaintiffs filed suit to challenge all proceedings of the suit no.10/80 as well as the decree on the

ground of fraud. In said suit, which was filed in the year 1984, the non-petitioner-plaintiffs did not choose to submit the relevant certified copies of the documents of the case no.10/80.The non-petitioner-plaintiff's evidence was completed and thereafter closed. The defendant's two witnesses were already examined, then in the year 2006, the plaintiffs submitted application under Order 13 Rules 10, C.P.C. for summoning the case file of civil suit no.10/80 and case file no.1/84 that too without submitting certified copies of any documents. Said application was opposed by the defendant-petitioner but the trial court allowed the application vide impugned order. On 23.5.2007.

According to the learned counsel for the petitioner, complete procedure has been prescribed under Order 13 Rule 10,C.P.C. how and when record can be summoned by the court. Further, the plaintiffs themselves are required to prove their case by producing the relevant documents and in the case also the plaintiffs should have tendered in their evidence the documents which they wanted to rely upon. The plaintiffs failed to produce and prove the documents and now in the garb of rebuttal evidence, want to produce evidence on the issue, the burden of which was upon the plaintiffs. The plaintiffs nowhere stated that

they applied for certified copies of the documents and copies were not given to them, nor their case is that it may have caused delay, if the plaintiff-non-petitioners would have obtained the certified copies of the relevant documents from the case file referred above. It is also submitted that there was no reason for allowing the said application after delay of more than 23 years.

The learned counsel for the respondent-plaintiffs vehemently submitted that the plaintiffs want to place on record the documents which clearly shows that the decree was obtained by fraud and possession was taken by the decree holders in pursuance of the decree obtained by fraud. It is also submitted that in fact these documents are required for the confrontation in evidence and, therefore, the plaintiffs prayed for summoning of the documents.

I considered the submissions of the learned counsel for the parties and perused the facts of the case and the reasons given by the court below.

Admittedly, the procedure under Order 13 Rule 10,C.P.C. has not been followed. The plaintiffs want to submit the certified copies of the relevant documents which should have been submitted before framing of the issues, if not filed along with the

plaint itself. There is no explanation why the documents were not summoned in last more than 23 years. There is no explanation why the certified copies of the documents which should have been exhibited in evidence of the plaintiffs when the plaintiffs had burden upon them to prove issue No.1. The court below has not considered all these aspects of the matter and by impugned order allowed the application. It may be observed that it appears to be a filling up of a lacuna by the plaintiffs and that too after delay of more than 20 years. I do not find any reason for taking any lenient view in such a matter where plaintiff's own case was kept pending for such a long period and by now 23 years have passed and the relevant documents were not submitted, which according to the plaintiffs, were necessary.

In view of the above reason, the writ petition of the petitioner is allowed and the impugned order dated 23.5.2007 is set aside. No order as to cost.

(PRAKASH TATIA),J.

mlt.